

Appl. No. 10/050,520  
Amdt. dated April. 27, 2005  
Reply to Office Action of April. 7, 2005

### **REMARKS /ARGUMENTS**

By the above amendment, Applicant has rewritten all claims to define the invention more particularly and distinctly to overcome the technical rejections and define the invention patentably over the prior art.

#### **Objection to claim 59 on Informalities**

The last office action objected to informalities in claim 59. The applicant has made corrections as appropriate.

#### **The Rejection Of Claims 59, 62-64, 68-72, 75-79, and 82 On Peterson Jr.**

#### **Are Overcome As The Rewritten Claims Recite Novel Physical Features**

The last office action rejected the above claims as being anticipated by Peterson Jr. (U.S. Patent No. 2,567,395). The claims have been rewritten as independent claims 59, 72 and 84 and dependent claims 60-71, 73-83 and 85-87 to define patentability over this reference.

#### **The Rejection Of Claims 60, 65, 73 and 80 On Peterson Jr. in view of Trimble-Gomez**

#### **Are Overcome As The Rewritten Claims Recite Novel Physical Features**

The last office action rejected the above defendant claims as being unpatentable over Peterson Jr. in view of Trimble-Gomez (U.S. Patent No. 5,711,425). The relevant claims have been rewritten as dependent claims to define patentability over these references.

#### **The Rejection Of Claims 61, 66, 74, 81 and 83 On Peterson Jr. in view of Annunziata**

#### **Are Overcome As The Rewritten Claims Recite Novel Physical Features**

The last office action rejected the above defendant claims as being unpatentable over Peterson Jr. in view of Annunziata (U.S. Patent No. 2,528,259). The relevant claims have been rewritten as dependent claims to define patentability over these references.

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Applicant requests reconsideration of this rejection, as now applicable to claims 59 to 87 for the following reasons:

**Claim Support**

Support for new limitations and amendments in the applicant's claims are shown throughout the text and drawings in the disclosure and can be found in at least one instance as follows:

- 59 a. - Figs. 2 and 3, [0034] and [0038].
- 59 b. - First structural area (supportive engagement) = Fig. 2, horizontal edge at lower perimeter 154.
- 59 b. - Second structural area (selective anti-displacement engagement) = Fig. 2, tooth 136 at pointer 138.
- 59 c. - Fig. 1 and [0040].
- 59 d. - First structural area (supportive engagement) = Fig. 2, upper edge of support contacting horizontal edge at lower perimeter 154 of movable member.
- 59 d. - Second structural area (selective anti-displacement engagement) = Fig. 2, notch 112.
- 59 d. - Engagement of movable member and support, Figs. 1 and 2 and [0035].
- 59 e. - Fig. 1 and [0064].
- 60. - [0034], Fig. 2, Fig. 3, Fig. 1.
- 61. - Figs. 1 and 7.
- 66. - Fig. 1.
- 69. - [0040].
- 70. - Fig. 1 and [0039] and [0040].
- 71. - Fig. 1, [0035] and [0040], schedule mark 122, acting as a designating mark for either a selection event by use of the movable member indicator or a medication dosing event.
- 72. - all support same as for 59.
- 73. - [0034], Fig. 2.
- 74. - same as for 61.
- 75. - same as for 62.
- 76. - same as for 69.
- 77. - same as for 64.

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79. - same as for 66.
80. - same as for 65.
81. - same as for 70.
82. - same as for 71.
84. - Figs. 1 and 2, [0034] and [0038].
85. - same as for 66.
86. - same as for 65.
87. - same as for 70.

**With regard to Peterson Jr.**

- (1) The Peterson Jr. device does not meet the applicant's independent claims (59 a) of "a deformable sheet movable member, said sheet including a first portion, and said sheet including a second portion linking to said first portion to form a loop", (72 a) of "providing a deformable sheet movable member, ..... the sheet including a first portion, and the sheet including a second portion for linking to the first portion to form a loop" and (84 a) of "a deformable sheet movable member, the sheet including a first portion, and the sheet including a second portion for linking to the first portion to form a loop".
- The Peterson Jr. movable continuous loop (14), the number data element (13) and the framing and masking element (15) are arranged concentrically with respect to each other in order to produce an operational custom device (column 4, lines 1-20). There is no suggestion in Peterson Jr. that the movable member (loop 14) cited in the last office action should or could be modified in a manner to meet the claim. It is not seen how such a modification could be employed without disturbing the relationships between the cooperating elements required to operate the device. It is also not seen what purpose such a modification would serve in the custom device, given that the other continuous loop elements (13) and (15) are similarly formed. Petersen Jr. further teaches away from such a modification by offering an alternative embodiment, using a split ring movable member (fig. 7, column 5 line 56 – column 6 line 2) to increase the utility of the invention.

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**With regard to Peterson Jr. in view of Trimble-Gomez on dependant claims**

(2) There is no suggestion in either of the references that they be combined. Even if the references could somehow be combined, their combination does not alter the inability of the combined device to meet the applicant's independent claims (59, 72 and 84). The rewritten dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them patentable over these references.

**With regard to Peterson Jr. in view of Annunziata on dependant claims**

- (3) There is no suggestion in either of the references that they be combined. Even if the references could somehow be combined, their combination does not alter the inability of the combined device to meet the applicant's independent claims (59, 72 and 84). The rewritten dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them patentable over these references.
- (4) The applicant therefore submits that the references do not meet the applicant's claims and that the references lack any suggestion that they be modified in a manner to meet the claims. The applicant further submits that there is no prior art other than the applicant's which suggests that the references be modified in a manner to meet the claims.
- (5) With regard to the rewritten dependent claims 60-71, 73-83 and 85-87. The rewritten dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them patentable over these references.

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**The Novel Physical Features Of The Amended Claims Produce  
New And Unexpected Results And Hence Are Unobvious  
And Patentable Over These References Under § 103.**

Also applicant submits that the novel physical features of the amended claims are also unobvious and hence patentable under § 103 since they produce new and unexpected results over Peterson Jr. in view of Trimble-Gomez and over Peterson Jr. in view of Annunziata. These new and unexpected results are a simpler, and lower cost device than the combined references, and greater likelihood of adoption. The applicant's device uses fewer components than the Peterson Jr. device and does not require a custom container, resulting in cost savings and in greater convenience. The applicant's device also appears easier to operate. Combining the references does not significantly alter the factors accounting for the differences between the Peterson Jr. and applicant devices. The applicant's device is superior to that of Peterson Jr. and to that of the combined reference.

**Conclusion**

For all of the above reasons, applicant submits that the claims are now in proper form, and that the claims all define patentability over the prior art. Therefore the applicant submits that this application is now in condition for allowance, which action is respectfully solicited.

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**Conditional Request For Constructive Assistance**

Applicant has amended the claims of this application so that they are proper and define novel structure which is also unobvious. If, for any reason this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. § 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

Very respectfully,

Harry Giewercer



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**CERTIFICATE OF FACSIMILE TRANSMISSION**

I certify that on the date below I will fax this communication, and attachments if any, to Technology Center 2800 of the Patent and Trademark Office at the following central number **(703) 872-9306**.

Date: May 17, 2005 No. of pages: 12

Inventor's Signature: 